

Zubik v. Burwell and public health at a glance

What are the facts of *Zubik*?

The Affordable Care Act requires employer health insurance plans to include coverage of all forms of contraception approved by the Food and Drug Administration. This requirement is enforced with a fine. The federal government accommodates religiously affiliated nonprofit organizations opposed to contraception by allowing them to complete a form that states their objection to contraception and allows their insurance company and the federal government to pay for contraceptive coverage for employees. Several nonprofit organizations claim the federal government's accommodation violates their religious beliefs because it is part of a process that allows employees to access contraception. They would like a total exemption from including contraception in their insurance plans, an exemption that currently only applies to churches and other houses of worship. The nonprofit organizations filed suit against the federal government, and the case reached the Supreme Court.

What are the potential effects on public health?

It is possible that a decision against the government could cause women across the country to lose access to [cost-free contraception](#) provided by their employer insurance plan. [According to the Kaiser Family Foundation](#), 10 percent of nonprofit organizations with 1,000 or more employees have indicated their opposition to providing contraceptive coverage by requesting the accommodation, as have 5 percent of similar organizations with 200 to 999 employees.

What are the legal issues?

The dispute in *Zubik* is whether the federal government's accommodation to nonprofit organizations, which releases them from the requirement to pay for contraceptive coverage in their insurance plans, violates the Religious Freedom Restoration Act.

What is the Religious Freedom Restoration Act?

[RFRA is a law](#) that states the federal government “shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability” unless the law “is in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling interest.”

What did the Supreme Court decide?

The Supreme Court did not decide any of the legal issues in the case. Instead, it suggested an alternative accommodation and asked if it would be acceptable to the nonprofit organizations and the government. The alternative accommodation the Supreme Court suggested was for religiously affiliated nonprofit organizations to let their insurance companies know that they do not want contraceptive coverage included in their insurance policies. Unlike the current accommodation the federal government offers, the religious nonprofits would not have to complete a form or put anything in writing. The insurance company would then provide contraceptive coverage without funding from the nonprofit organization. Only religious nonprofit organizations qualify for the Supreme Court's alternative accommodation and the accommodation currently offered by the federal government. The federal government and the nonprofit organizations agreed that the alternative accommodation would be acceptable. The Supreme Court then sent the cases back to the lower courts with instructions to give the government and nonprofit organizations an opportunity to develop the details of the alternative accommodation in a way that would provide full contraceptive coverage to the nonprofits' employees. Because the Supreme Court did not decide the legal issues in the case, however, it is possible that other religiously affiliated nonprofit organizations could challenge the results of *Zubik v. Burwell*.



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